

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MELVIN KETCHUM,	§	
TDCJ-CID NO. 1323518,	§	
	§	
v.	§	C.A. NO. C-08-193
	§	
NATHANIEL QUARTERMAN,	§	
DIRECTOR, TDCJ-CID.	§	

**ORDER DENYING MOTION FOR AN EVIDENTIARY HEARING**

Petitioner is an inmate in the Texas Department of Criminal Justice, Correctional Institutions Division, and is currently incarcerated at the Eastham Unit in Lovelady, Texas. Proceeding pro se, he filed a habeas petition pursuant to 28 U.S.C. § 2254. (D.E. 1). Pending is petitioner's motion for an evidentiary hearing. (D.E. 13).

Rule 8(a) of the Rules Governing Section 2254 Cases states that "[i]f the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted." Rule 8(c) further requires that "[t]he judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare." The Fifth Circuit has explained that "[a] hearing in a habeas proceeding is required only when, *inter alia*, the record reveals a genuine factual dispute." Tague v. Puckett, 874 F.2d 1013, 1015 (5th Cir. 1989) (emphasis added); see also Murphy v. Johnson, 205 F.3d 809, 815-16 (5th Cir. 2000) (discussing basis for evidentiary hearing).


Petitioner is challenging his conviction for sexual assault of a child by the 347th Judicial District Court in Nueces County, Texas. (D.E. 1, at 2). In the pending motion, he argues for an evidentiary hearing because the state trial court never afforded him an evidentiary hearing. (D.E.

13, at 1-2). On June 17, 2008, an order for service of process was issued. (D.E. 10).

Respondent has not yet filed an answer. Consequently, if an evidentiary hearing is determined to be necessary, then one will be set.

Accordingly, it is ORDERED that petitioner's motion for an evidentiary hearing, (D.E. 13), be DENIED without prejudice.

ORDERED this 25th day of June 2008.

  
BRIAN L. OWSLEY  
UNITED STATES MAGISTRATE JUDGE